INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	5
Conclusion	7
Appendix	8

CITATIONS

Cases:	
Cleveland v. *United States*, 323 U. S. 329	5
United States v. *City of Chester*, 144 F. 2d 415	4, 5, 6
United States v. *Grimaud*, 220 U. S. 506	5
Statutes:	
Housing Authorities Law of Commonwealth of Pennsylvania of May 28, 1937, P. L. 955	3
Lanham Act of October 14, 1940, c. 862, 54 Stat. 1125, as amended, 55 Stat. 147, 361, 56 Stat. 11, 42 U. S. C. Supp. III:	
Sec. 1521	5, 6, 8
Sec. 1541	6, 9
Sec. 1545	7, 9
Sec. 1547	6, 10
Sec. 1548	10
Miscellaneous:	
Executive Order No. 9070, February 24, 1942, 50 U. S. C. App., Supp. III, sec. 601	3

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1207

CITY OF PHILADELPHIA; RUFUS S. REEVES, DIRECTOR OF DEPARTMENT OF PUBLIC HEALTH, AND HERBERT M. PACKER, CHIEF OF THE DIVISION OF HOUSING AND SANITATION OF THE DEPARTMENT OF PUBLIC HEALTH OF THE CITY OF PHILADELPHIA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 55a–61a) [1] is reported in 56 F. Supp. 862. The opinion of the circuit court of appeals (Pet. pp. 27–28) is reported in 147 F. 2d 291.

JURISDICTION

The judgment of the circuit court of appeals sought to be reviewed was entered on February 16, 1945. The petition for certiorari was filed April 26, 1945. The jurisdiction of this Court is invoked under

[1] Appellant's appendix in the circuit court of appeals.

section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether permanent buildings of a defense housing project constructed by the Federal Public Housing Authority under the Lanham Act of October 14, 1940, c. 862, 54 Stat. 1125, 42 U. S. C. secs. 1521–1564, must conform to state and local building regulations.

STATUTE INVOLVED

The statutory provisions involved are set forth in the Appendix, *infra*, pp. 8–10.

STATEMENT

Acting pursuant to the provisions of the Lanham Act, the President on November 20, 1940, and February 3, 1941, found that an acute shortage of housing which would impede national defense activities existed or impended in the Philadelphia area to the extent of 1,500 dwelling units (R. 4a, 21a, 52a–54a, 55a–56a). To meet this situation the Federal Works Administrator acquired a suitable site in Philadelphia and erected thereon during the summer and fall of 1941 a housing project known as "Passyunk Homes" consisting of 1,000 dwelling units (R. 46a, 56a). Included in the original plans and specifications for this project were provisions for the erection of a Community Building, a Maintenance Building, and a Commercial Facilities ("stores") Building (R. 27a, 56a). The actual construction of these three buildings was not begun, however, until October 1943 (R. 4a, 46a, 56a), when the Federal Public Housing

Authority,[2] acting through the Philadelphia Housing Authority,[3] let the construction contract to George H. Evans & Co., of Philadelphia. That company in turn entered into a contract with the Diletto Company for the installation of the plumbing called for in the Government's specifications and plans (R. 46a, 56a).

On October 20, 1943, Herbert M. Packer, Chief of the Division of Housing and Sanitation of the Department of Public Health of the City of Philadelphia, advised the Philadelphia Housing Authority by letter that it would be necessary for the Authority to file plans and secure permits to construct the buildings in question (R. 5a, 22a–23a, 46a, 56a–57a). The United States, nevertheless, proceeded with the construction of these buildings without filing any plans or applying for any permits (R. 5a, 50a, 57a). On December 28, 1943, Mr. Packer ordered Mr. Diletto to stop all plumbing work until he had complied with state statutes and rules and regulations of Plumbing Supervision adopted thereunder (R. 5a–6a, 23a, 51a–

[2] The Federal Public Housing Authority was created by Executive Order No. 9070, February 24, 1942, 50 U. S. C. App., Supp. III, sec. 601, which transferred to it the functions, powers and duties relating to defense housing which had been theretofore vested in the Federal Works Administration under the Lanham Act (cf. R. 3a, 55a).

[3] The Philadelphia Housing Authority is a body politic and corporate, created under the Housing Authorities Law of the Commonwealth of Pennsylvania of May 28, 1937, P. L. 955, and acts as agent of the United States, through the Federal Public Housing Authority, in the construction of housing projects under the provisions of the Lanham Act (R. 55a).

52a, 57a). As a result of this order the subcontractor refused to proceed with the plumbing work without court protection (R. 6a, 23a, 47a, 57a).

The United States thereupon filed in the United States District Court for the Eastern District of Pennsylvania a complaint seeking to enjoin the city of Philadelphia and its officers from interfering with the construction of the remaining buildings in the Passyunk Homes Housing project (R. 2a). The case came on for hearing before Judge Kalodner on February 18, 1944 (R. 24a), the essential facts having been previously agreed to by the parties (R. 25a, 45a–50a). The Government called one witness to prove the additional fact that the buildings in question were "part of the original project when the [Passyunk] Homes were started" (R. 27a). On July 17, 1944 the Circuit Court of Appeals for the Third Circuit decided *United States* v. *City of Chester*, 144 F. 2d 415, in which it held that local building regulations were not applicable to temporary housing projects constructed under the Lanham Act. The City of Philadelphia, petitioner herein, appeared as *amicus curiae* in the *City of Chester* case. On July 28, 1944, the trial court filed findings of fact, conclusions of law, and a written opinion sustaining the Government's right to injunctive relief in the instant case (R. 55a–61a). It rejected defendants' contention that the *Chester* case was distinguishable because here permanent buildings are involved. A final decree having been entered on October 3, 1944 (R. 62a–64a), defendants appealed to the United

States Circuit Court of Appeals for the Third Circuit. That court affirmed in a *per curiam* opinion relying upon its decision in the *Chester* case, the court holding that the fact that the buildings here were permanent did not distinguish its earlier decision (Pet. pp. 27–28).

ARGUMENT

The Lanham Act (Section 1521) [4] authorizes the Administrator "By contract or otherwise" to plan, design and construct buildings and community facilities "without regard to * * * any Federal, State or municipal laws, ordinances, rules, or regulations relating to plans and specification or forms of contract". As the court below held in the *City of Chester* case (144 F. 2d at p. 420), this provision was included by Congress to facilitate speedy construction of housing units in view of the war emergency, avoiding delays which might have resulted from attempts by local authorities to apply building codes, etc., to such projects.

Petitioners do not appear to be contending that this provision is unconstitutional.[5] Congress has the same power to protect federal housing projects against obstructive local police regulations as against state taxation. Cf. *Cleveland* v. *United States*, 323 U. S. 329.

---

[4] The sections referred to are those shown in 42 U. S. C. Supp. III.

[5] Petitioners do suggest (p. 14) that the provision in Section 1548 that the Administrator "shall establish reasonable standards of safety, convenience, and health" contains an invalid delegation of legislative power. But cf. *United States* v. *Grimaud*, 220 U. S. 506, 516.

Petitioners argue that Section 1521 should not be construed to mean what it so plainly says, at least in so far as permanent buildings are concerned. But the authority to "plan," "design" and "construct" "without regard to * * * municipal laws, ordinances, rules, or regulations relating to plans and specifications" contains no exemption for permanent structures. Since a proviso in the same section of the Act authorizes the Administrator to "construct temporary units" in some circumstances, it is clear that Congress contemplated that both temporary and permanent structures would be built. The possible difficulties which may confront the Government if and when it seeks to dispose of the properties after the emergency, pursuant to Section 1541, do not justify disregard of the express congressional mandate.

Petitioners urge (p. 15) that the provision in Section 1547 that the acquisition of real property by the Administrator should not deprive the state or municipality of its "civil and criminal jurisdiction" shows that Congress did not intend to free the Administrator from the need for compliance with state building laws. If there were any conflict, the specific provision in Section 1521 dealing with laws "relating to plans and specifications" would clearly control. *United States* v. *City of Chester*, 144 F. 2d, at 421–422. In any event Section 1547 was intended only to declare that the United States will not acquire sovereignty over areas occupied by housing projects—to preserve the state's existing jurisdiction in the territorial sense, and not at all to grant it additional

authority to control the governmental conduct of the United States.

Petitioners also contend that the Administrator did not comply with the provision in Section 1545 for a consultation with local public officials. The record contains no evidence on this point. No such defense was raised in petitioners' answer (R. 20a–24a), and the trial court properly indicated that the burden of producing such evidence was on the petitioners-defendants (R. 61a).

CONCLUSION

The decision of the court below is correct and no conflict of decisions is involved. Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted.

HUGH B. COX,
Acting Solicitor General.
J. EDWARD WILLIAMS,
Acting Head, Lands Division.
ROGER P. MARQUIS,
GEORGE S. SWARTH,
ROBERT L. STERN,
Attorneys.

MAY 1945.